

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1580 of 1997

DINESHBHAI SOMABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPPEE for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of Order: 02/03/98

ORAL ORDER

Rule. Learned APP Shri A J Desai waives service on behalf of respondent no.1 and 2. By consent of learned advocate, matter is finally heard.

2. The petitioner has approached this court under Section 226 & 227 of the Constitution of India with a prayer to claim appropriate writ or direction to respondent no.2 for renewal of permit in respect to vehicle bearing Registration No. GJ-9-T-1044 which is a matador van used by the petitioner for his business.

3. It is contended by the petitioner that the above stated vehicle was earlier examined and passed by the concerned officer of Respondent no.2 and a permit of period for 26.4.97 was issued. That the petitioner has been using the same vehicle under the said permit for his business. That on expiry of the said permit the petitioner approached the concerned officer of respondent no.2 for renewal of the said permit. However, the petitioner was informed orally that about 10 to 12 non-cognizable memos are pending in respect to the said vehicle and unless the said complaints are compounded by the petitioner on payment of penalty permit shall not be renewed as claimed by the petitioner. That the petitioner vide communication dated 3.11.97 copy of which is produced as Annexure 'B' on running page 18 requested respondent no.2 to renew the said permit and informed the

authority that petitioner has not received any memo from respondent no.2. That the petitioner had also inquired in the court of JMFC Himatnagar by filing Cri.Misc.Appl. No. 91/97 to clear any pending NC complaint against him. That vide order dated 20.9.97, learned JMFC, Himatnagar has rejected the said criminal misc. application inter alia holding that no NC complaint have been received by the court either from the police or from RTO and as such no NC is pending in respect to the said vehicle. Hence application deserves to be rejected. That the petitioner has incorporated the said fact of order passed by learned JMFC in his communication dated 3.11.97 to respondent no.2, However, respondent no.2 has replied to said communication vide letter dated 10.11.97, copy of which is produced at Annexure 'C' on running page 20, whereby respondent no.2 has informed the advocate of the petitioner to the extent that no order from the court of Chief Judicial Magistrate, Himmatnagar as referred to by the petitioner in the communication dated 3.11.97 has been received by respondent no.2 and thereby respondent no.2 to forward a certified copy of such order so that further procedure could be followed.

4. Shri J.V.Japee, learned advocate appearing on behalf of the petitioner has contended that respondent no.2 Authority is duty bound to renew the permit as the petitioner has followed all the necessary procedures prescribed under the rules. That respondent no.2 Authority has no power to refuse the renewal or withhold the renewal of the permit on the alleged ground of non-clearance of NC memo alleged to have been issued in respect to the subject behicle. That under the due process of law, respondent no.2 Authority is supposed to forward any NC memo if issued in respect to the subject vehicle to the competent court and the petitioner shall appear before the court and discharge due application as ordered by the court. Shri Japee has alleged that respondent no.2 authority is using pressure tactics by not renewing the permit of the said vehicle in order to compel the petitioner to compound alleged pending NC memo and to pay heavy penalty as desired by the concerned officer of respondent no.2. That on account of such arbitrary and unlawful act of respondent no.2, the petitioner is constrained to approach this court for the prayer made as stated herein above.

5. Initially show cause notice pending admission was issued and learned APP on behalf of respondent no.1 & 2 had waived service. That during the hearing, learned APP Shri A J Desai has stated that respondent no.2 has no reason to withhold NC memo in respect of the subject

vehicle as alleged on behalf of the petitioner. It is submitted on behalf of the respondents that respondents shall follow the due procedure if the petitioner comply with the requirements prescribed under the rules.

6. In consideration of overall facts and circumstances, apparent from the material produced on record, I held that the act of respondent no.2 of not considering the request of renewal of permit for the subject vehicle on the ground of non-clearance of pending NC is alleged to have been issued against the subject vehicle is arbitrary and unlawful and thereby it is necessary to give appropriate directions to the respondent. That respondent no.2 shall forward pending NC Memo, if any, in respect to Matador Van bearing Registration No.GJ-9-T-1044 to the competent court within 2 weeks from the date of receipt of certified copy of this order and thereafter shall consider the request made on behalf of the petitioner vide communication dated 3.11.97 in respect to renew the permit of the said vehicle within a period of 4 weeks. Rule is made absolute accordingly. In the facts and circumstances, no order as to costs.

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